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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN
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NEIL GAIMAN and MARVELS AND
MIRACLES, LLC,

Plaintiffs,

v.

TODD McFARLANE, et al.

Defendants-Counterclaimants.

J.W. KRUPNIEWITZ
CLERK US DIST COURT
WD OF WI

Case No. 02-C-0048-S

MOTION TO AMEND COUNTERCLAIM

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Defendants Todd McFarlane and Todd McFarlane Productions, Inc. ("Movants") respectfully move this Court for leave to amend the Counterclaims filed against the plaintiffs in this matter. A copy of the proposed Third Amended Counterclaim is attached to this motion as Exhibit A. In support of their motion, Movants state as follows:

1. Movants' original Counterclaim, included in their Answer and Amended Answer to the Complaint as well as their Answer to the Amended Complaint, alleged a fraud claim against Plaintiff Gaiman as Count II.

2. That fraud counterclaim alleged that Mr. Gaiman had misrepresented or concealed certain essential facts about his agreement with DC Comics. His DC Comics agreement was relevant because it formed the basis for the alleged contract at the heart of this case. In the fraud counterclaim, Movants alleged that they paid money to Mr. Gaiman and gave him valuable property in reliance upon his representations as to the terms of his DC Comics

agreement. The facts alleged in support of that fraud counterclaim were based upon Movants' knowledge at the time Plaintiffs commenced this action.

3. During discovery earlier this month, Movants were given access for the first time to Mr. Gaiman's actual agreements with DC Comics and also took the deposition of a representative of DC Comics concerning the terms of those agreements. That discovery confirmed Mr. Gaiman's misrepresentations and revealed numerous additional material misrepresentations and concealments by Mr. Gaiman.

4. Accordingly, Movants' proposed Third Amended Counterclaim expands upon the original allegations of fraud contained in Count II. (In addition, Movants have changed a handful of other allegations to conform them to facts learned in discovery.)

5. Rule 15 states that leave to amend "shall be freely given when justice so requires." Such is the case here, since the filing of this proposed Third Amended Counterclaim—which is based entirely upon facts disclosed to Movants earlier this month by Mr. Gaiman and DC Comics—will prejudice no one and will cause no delay because Mr. Gaiman already knew each of the new facts alleged. Indeed, those facts are contained in his own DC Comics contracts—the very contracts he hid from Movants until he was forced to disclose them in discovery.

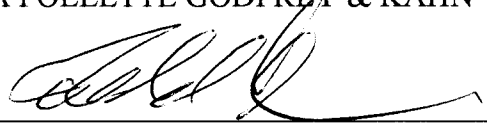
6. The previously-filed Appendix and Supplement to Appendix to Answer to Amended Complaint and Counterclaims of the McFarlane Defendants is incorporated into the proposed Third Amended Complaint. No new appendix need be filed.

WHEREFORE, the McFarlane Defendants respectfully ask this Court for leave to file the attached Third Amended Counterclaim.

Dated: July 30, 2002.

LA FOLLETTE GODFREY & KAHN

By



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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served on all counsel of record via facsimile transmission this 30th day of July, 2002, addressed to the following:

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